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IN THE

Supreme Court of the United States

October Term, 1965
Nos. 741, 848, Misc.

FLEMING DANIEL GRAY, JR., ANNETTE MARIE BECKER, WOODROW COLEMAN, ROBERT HALL, CHARLES BRATTON, JAY MARTIN FRANK, BRUCE A. HARTFORD, and MARIE GOLDMAN,

Petitioners,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

Statement.

Petitioners were charged by the People of the State of California in a verified complaint with violations of Sections 602(j), 415 and 594 of the Penal Code of the State of California, misdemeanors. They were duly arraigned, informed of the charges against them and of their legal rights, entered pleas of not guilty and demanded a jury trial. They were convicted of violating Sections 602(j) and 415, and found not guilty of Section 594. At the time of sentencing Count II was dismissed. They appealed to the Appellate Department of the Superior Court of the State of California for the

County of Los Angeles, which court affirmed the judgment of conviction with a written opinion.

A petition for rehearing and/or certification to the District Court of Appeal was filed by petitioners. The cause was certified to the District Court of Appeal, which court denied the request for transfer. Petitioners now seek a writ of certiorari in this court.

Facts.

On April 18, 1964, at approximately 5:30 P.M., petitioner Charles Bratton entered Thriftimart Market, located at 2600 South Vermont Avenue in the City of Los Angeles [R. T. p. 35, lines 21-22; p. 37, lines 7-15]. He handed out leaflets to customers in this supermarket [R. T. p. 37, lines 16-21; p. 110, lines 11-17]. He then made a gesture and the other petitioners entered the market [R. T. p. 111, lines 22-26]. The petitioners removed the Van de Kamp's bakery products from counter number 3 and placed them in market baskets. All shelves containing Van De Kamp products were emptied [R. T. p. 84, lines 2-10]. Market baskets were piled high with Van de Kamp products by the petitioners [R. T. p. 85, lines 13-14]. Large signs with civil rights slogans, and leaflets were placed on counter number 3 after it had been emptied [R. T. p. 116, lines 7-12]. Petitioners stood in the Van de Kamp aisle and loudly sang songs and clapped their hands [R. T. p. 117, lines 14-16; p. 84, lines 15-17; p. 39, line 24; p. 41, lines 15-17]. Leaflets were left strewn on the floor in the Van de Kamp aisle [R. T. p. 85, lines 8-10]. Some Van de Kamp products were damaged beyond the point where they could be resold [R. T. p. 141, lines 11-12, 20-21].

Issue Presented.

California Penal Code Section 602(j) is constitutional and is not an invalid restriction on free speech. Such section provides:

> "602 . . . Every person who wilfully commits any trespass by either:
>
> "(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession; or . . ."

Freedom of speech is not an absolute or unqualified right but is subject to reasonable restriction when necessary to safeguard the public interest. The First Amendment to the federal Constitution embraces two concepts, freedom to believe and freedom to act. The first is absolute, but in the nature of things the second cannot be absolute since conduct remains subject to regulation for the protection of society.

Cantwell v. Connecticut, 310 U.S. 296;
Black v. Cutler Laboratories, 351 U.S. 292.

Picketing is not beyond the control of a state if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance.

Hughes v. Superior Court of California, 339 U.S. 460, 465-466.

In *Cantwell* this court recognized that "[W]hen clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious."

Respondent submits the actions of petitioners did not constitute peaceful picketing as was the situation in *Garner v. Louisiana,* 368 U.S. 157, where persons were sitting at a lunch counter merely desiring service.

Petitioners entered the store, removed products from shelves, filled shopping carts with bakery products, sang and clapped their hands, and left leaflets and signs strewn about in the aisle. This, respondent submits, is not free speech.

If every product that is sold in a market, or if every lessee in a market were to arouse some group to such an extent that it was to enter the premises and picket either the product or the lessee, respondent submits this would be utter chaos, constituting a clear and present danger to the peaceful operation of the market.

Just as "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic," it is submitted that free speech would not justify the conduct and actions of the petitioners in this case.

Petitioners rely on *Schwartz-Torrance Investment Corp. v. Bakery and Confectionery Workers Union,* 61 Cal. 2d 766, as justification for picketing inside the Thriftimart premises. In that case the pickets were on the sidewalk adjacent to the store. At no time did the pickets enter the store itself.

If petitioners herein had remained on the sidewalk adjacent to the Thriftimart premises they might have been exercising their right of free speech. When they entered the market, interfering with the business carried on therein, their conduct was subject to valid control by the State.

Respondent submits that the statute is constitutional.

Conclusion.

The petition for writ of certiorari does not disclose there has been a violation of petitioners' rights under the federal Constitution, nor does it show that the highest court of the State of California has decided a federal question in conflict with applicable decisions of this court, or decided a federal question of substance not theretofore determined by this court.

It is urged that the petition be denied.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
PHILIP E. GREY,
Assistant City Attorney,
MICHAEL T. SAUER,
Deputy City Attorney,
Attorneys for Respondent.